

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Implementation of the
Pay Telephone Reclassification
and Compensation Provisions of the
Telecommunications Act of 1996

CC Docket No. 96-128

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SUMMARY

In these comments, Frontier agrees with the Commission that marginal costs is the proper standard by which "fair compensation" should be determined.

To administer a compensation system, Frontier sets forth two alternative workable plans for implementing the Telecommunications Reform Act of 1996 pay telephone compensation provisions. The two alternatives are "caller pays," and "LEC-administered carrier pays." The former is the most economically correct, while the second is only a distant second best with the least distorting qualities of any of the other alternatives that might be considered. The latter, second best proposal, is based upon a previous proposal of APCC. These alternatives contrast sharply with the ambiguous, onerous, and costly system proposed in the NPRM which clearly does not comply with the requirements of the Act, the Paperwork Reduction Act, and the Regulatory Flexibility Act. Moreover, these alternatives assure that every completed call will receive uniform compensation, as compared with the patchwork quilt set forth in the NPRM that appears to inadvertently ignore intraLATA and local calls over LECs, particularly BOCs.

The Commission must be very concerned about fraud in any compensation system by pretend pay telephone operators. Thus, as a threshold matter, the Commission should adopt a clear definition of what constitutes a pay telephone and also require that pay telephones connect to local lines that generate traceable information digits.

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COMMENTS

Frontier Corporation, on behalf of its local exchange and long distance subsidiaries, hereby submits these comments on the Notice of Proposed Rulemaking, released June 6, 1996, in the above captioned proceeding.

A major goal of these comments is to assure among all potential payers and services,

- 1) the uniform application of the marginal cost standard for "fair compensation,"
- 2) minimizing transactions and transactions costs,
- 3) minimizing opportunities for fraud by aberrant payphone providers, and
- 4) assuring no unlawful windfall by either the payphone industry or the Bell Operating Companies.

Unfortunately, many of the tentative conclusions of the NPRM are in direct conflict with these goals, the statute and the Commission's previous findings regarding

payphone compensation. The NPRM makes the mistake of attempting to graft the existing scheme onto the new regime required by the statute. The result is a proposal in the NPRM of a “Rube-Goldberg” payment mechanism that is unnecessarily onerous and inefficient, in conflict with the goals of the Paperwork Reduction Act and the Regulatory Flexibility Act. The NPRM’s proposal fails to take the most efficient and least burdensome approach to satisfying the Act.

Frontier hopes by the comments, to provide constructive suggestions that strike a balance between the payment and collection of “fair compensation,” and the transaction costs of accomplishing this objective.

In a nutshell, the Commission should give serious consideration to a caller-pays scheme (with a carrier’s option to assume the charges). This is the most economically efficient method of collecting the compensation charges because it assures that the party who chose to use the pay telephone will pay the compensation. Other schemes, which are found in the NPRM, instead impose the compensation on parties who have no say in whether a payphone was used for making the call.

However, if the Commission rejects the more economically efficient-caller pays scheme, it is shown that the only second best alternative is a LEC-administered payphone compensation scheme (such as that already implemented in Ameritech and Southwestern Bell territory). Such a second best solution will minimize the transaction costs for payphone compensation administration and capitalize on the existing and future business relationships these LECs have with

payphone providers. In comparison, the FCC's NPRM proposal would require the creation of 1 million new business relationships, covering 4 million cash transactions per year, for 1.85 million telephones. The NPRM's approach is clearly not a transaction and cost minimization approach.

I. A Brief Review of Section 276 of the Telecommunications Reform Act of 1996

The Telecommunications Reform Act of 1996 (TRA96) makes two major changes with regard to pay telephones.

First, TRA96 immediately modified the status of pay telephones to that of non-"telecommunications services." The NPRM generally ignored this important paradigm shift. This change causes the Commission to have limited, incidental, jurisdiction over payphone operators. The change in status from carrier to non-carrier also requires that the statutory language be read as narrowly as possible because it involves the transfer payments from carrier to non-carrier entities.

The reclassification of payphone services (or more generally "aggregator services") is explicitly found in the TRA'96 definition amendments. TRA'96 at Section 3(a)(49). This section amends the general definitions section of the Communications Act, 47 U.S.C. §153. These new definitions (including the reclassification of payphone services as non-common carrier services) affect every provision of the Communications Act. No new regulations are required for the immediate effect of this new reclassification of payphones as non-common carrier services because no

further action or regulation is demanded by the TRA'96 with regard to the new definitions in 47 U.S.C. §153.

The second major change of the TRA96 with respect to payphones is found in Section 276. Specifically, Section 276 of TRA96 provides that:

(a) **NONDISCRIMINATION SAFEGUARDS-** After the effective date of the rules prescribed pursuant to subsection (b), any Bell operating company that provides payphone service--

(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

(2) shall not prefer or discriminate in favor of its payphone service.

(b) **REGULATIONS-**

(1) **CONTENTS OF REGULATIONS-** In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that--

(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;

(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan

as specified in subparagraph (A);

(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding;

(D) provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones, unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest; and

(E) provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones.

(2) PUBLIC INTEREST TELEPHONES- In the rulemaking conducted pursuant to paragraph (1), the Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.

(3) EXISTING CONTRACTS- Nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of the date of enactment of the Telecommunications Act of 1996

(c) STATE PREEMPTION- To the extent that any State requirements are inconsistent with the Commission's regulations, the

Commission's regulations on such matters shall preempt such State requirements.

- (d) **DEFINITION-** As used in this section, the term 'payphone service' means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.¹

II. **Frontier Agrees with the Commission's Tentative Conclusion That Marginal Costs Represents "Fair Compensation" on "Each of Every Completed ...Call"**

A uniform application of the marginal cost standard to every completed call (whether commissioned 0+/0- calls or "dial-around calls") is required to comply with the primary objective of complying with Section (b)(1)(A). That section states that the Commission, through rules, must:

- (A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;

The Commission has already determined in the NPRM that "marginal costs" represents "fair compensation." This finding is found in footnotes 54 and 64. In those footnotes, the Commission states that:

[t]he issue of fair compensation arises only in cases where the caller uses a PSP's equipment to dial around the payphone's presubscribed IXC, because the PSP does not receive any revenue to cover its marginal costs in originating the call, ...¹

¹(emphasis added) NPRM at footnote 54.

...while the local call provides some revenue to the PSP, local coin rates in some jurisdictions may not cover the marginal cost of the service. In these situations, if a caller uses a payphone at a subsidized local coin rate, the PSP is not being fairly compensated.²

Thus, the Commission has clearly equated “marginal costs” as the definitive test for determining “fair compensation.”

Using the marginal cost standard to set “fair compensation” makes sense for several reasons. Given that PSP have many sources of revenue other than compensation (including advertising at the telephone, vertically integrated local, long distance, and enhanced services provided by the PSP or its affiliate), it is not the role of compensation for calls to cover the entire costs of providing payphone services. Instead, the role of compensation is simply to cover the additional costs, if any, that are caused by providing the ability to originate these compensation calls on these pay telephones. This indisputable economic view leaves the Commission with only one test for determining the economically rational basis for determining compensation for calls subject to the compensation requirement -- namely the marginal cost test. The TRA’96 does not require that compensation be prescribed such that payphone providers (whether efficient or inefficient) are profitable, instead only “fair” compensation is required on completed calls over other carriers.

Moreover, keeping the compensation levels in line with marginal cost will deter the tempting fraud opportunities that a “carrier pays” compensation scheme

²(emphasis added) NPRM at footnote 64

creates. If compensation is limited to paying only the marginal costs of originating a call from a pay telephone, the Commission will be assured that only the additional costs imposed on a payphone operator by making the call will be reimbursed. On the other hand, if the compensation scheme recovered other costs, besides marginal costs, the Commission will be simply making the fraud opportunity more lucrative because the fraudulent payphone imposter would be “reimbursed” for costs that it would not have incurred. Thus, marginal costs is clearly the proper and best measure for any prescribed compensation level because it strikes a balance between assuring that costs caused are covered and fraudulent temptation caused by firms being reimbursed for costs not caused by the calls in question.

There is a very sound basis in economics for applying the marginal cost standard here. As noted economist Alfred Kahn states: “every buyer ought to pay a price equal to the cost of supplying one additional unit,”³ i.e., its “marginal cost.” Moreover, a corollary of the principle of marginal cost pricing requires that if the Commission applies a marginal cost standard to some calls (as it has clearly done with coin-sent paid and commissioned calls, per footnotes 54 and 64), it should apply the same compensation threshold to all calls.⁴

Thus, the Commission’s proposed application of marginal cost standard to

³Kahn, A, “The Economics of Regulation: Principles and Institutions, Volume I, 1970 at 65-67.

⁴Id. at 69-70 [“The ‘first-best’ solution..would be to reduce the prices of both A and B (and of all other goods and services in the economy) to marginal costs.”]

coin and commissioned calls moots the entire discussion of Section (e) of the NPRM, which appears to erroneously suggest that some other cost standard would apply to “dial-around calls. Only the marginal cost standard may be applied, and it must be uniformly applied. Based on previous submissions and empirical data, the marginal costs to a payphone owner of providing “dial around” calling from a payphone is anywhere from zero to less than 10 cents per call.⁵

By applying the marginal cost standard in a way that does not presume a rate structure (i.e., a charge per call vs. a charge per minute, or combination of both), a rate structure falls out of the marginal cost analysis. That is to say, the rate development should be of the general form of $a + bt$, where a is the charge per call, and b is the charge per minute of that call. Only if marginal cost component “ a ” is substantially greater than the marginal cost component “ bt ,” should the second term be disregarded, i.e., a per call charge should only be employed if this proves to be the case. Similarly, if the “ bt ” term is substantially greater than the “ a ” term, a per minute charge is more appropriate. Regardless, each and every call is compensated by this general method. Intuitively a per minute rate structure element would clearly dominate a per call rate structure element because there is little or no initiation cost for toll-free or dial-around calls made over payphones.

In sum, marginal cost are the only costs that should be considered in prescrib-

⁵The marginal costs of providing dial-around during off-peak calling times is zero, while Hatfield has previously found a per call cost of 8.5 cents per call -- MCI Comments, CC Docket No. 91-35 at 1, Frontier Reply at 1.

ing a “fair compensation” for calls. The Commission has already decided in the NPRM that marginal costs are the proper standard when it considered the minimum level for sent-paid and 0+/0- commissioned calls.

III. Caller Charges Are the Ideal Method of “Fair Compensation” Recovery

The Commission has had a long history of preferring caller charges (i.e. charges assessed on the party who chooses to use the pay telephone) for recovering compensation for pay telephones. In paragraph 58 of the Commission’s Access Charge Reconsideration, 97 FCC 2d at 705, ¶58, the Commission stated a position that favors end user charges:

The ideal solution would be to recover the nontraffic sensitive costs of public pay phones from end users who rely upon payphones to originate their interstate calls.

Id. at ¶58.

Caller charges means that the default mechanism would be that the originating caller pays compensation charges directly to the payphone provider (e.g., coin drop.) End user charges does not mean, as the FCC suggests in the NPRM, a “set use fee.” NPRM at ¶27.

The NPRM only gives serious consideration to the “set use fee” and the “carrier pays” mechanism. The “set use fee,” like its aggregate cousin “carrier-pays,” fails the economics litmus test of cost causation. NPRM at ¶¶ 24-28.

Specifically, neither of these alternatives impose the charge for using the payphone

on the party who chose to use and ultimately used the payphone -- i.e. the caller. The set use fee is simply a more complex version of the carrier pays system. The only time it makes sense for a "set use fee" or "carrier pays" type option (i.e. to charge the compensation back to the billed party, but not necessarily the caller) is where there are economic network externalities that are so large that most of the benefits of having used the pay telephone are received by the billed party, rather than the calling party. However this is rarely the case given that the called party or billed party is indifferent as to the point of origination of the call (i.e. whether the call originated from a pay telephone vs a non-pay telephone), while the caller is not indifferent (i.e. the caller chose to use the pay telephone to originate the call because of the benefit that the caller had in terms of convenience, etc.). Moreover, the caller pays arrangement minimizes the transaction costs for compensation (i.e. no bills need to be rendered, no calls need to be tracked by any carrier, no ANIs need to be exchanged between companies, no billing disputes will occur between carriers, etc).

If a carrier believes that one of its particular 800 services or calls made over a particular access code involves a service with large externalities (such that it makes sense that the billed party should pay for the use of the payphone), then the carrier should have the option of negotiating with the payphone provider to allow it to be paid directly by the carrier and the payphone provider will suppress any charging of the originating caller. In Texas, PSPs already selectively suppress coin deposits on certain calls to operator services, but continue to impose such coin deposits on non-

operator service 800 calls. Thus, the technology is obviously in place (and being used) to assess caller-pays charges on some dialed 800 numbers, but not others where the carrier pays.

In sum, caller-pays (with a carrier option to pay compensation through negotiation with the payphone provider) is the most economically efficient means with the minimum transaction costs for assuring compliance with Section 276 of the Communications Act.⁶

IV. If a Carrier-Pays System Is Mandated, the LECs Should Collect All Charges and Disburse Payments Using Their Existing Business Relationships

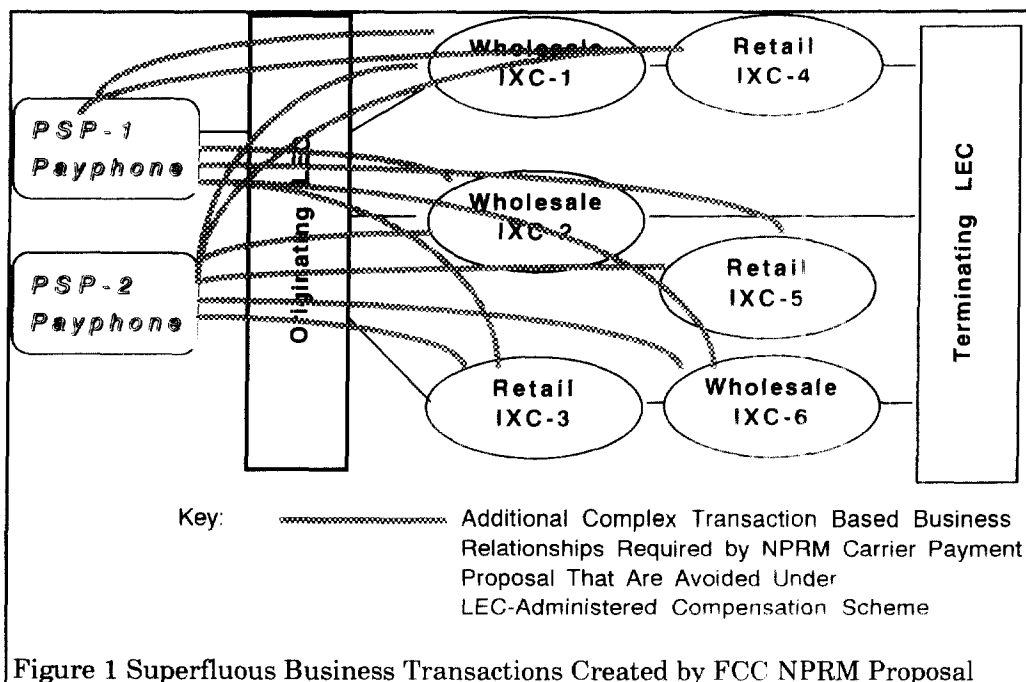
Any “carrier-pays” system should be administered for each pay telephone by the LEC that provides COCOT service to that pay telephone. This is the only way to assure that compensation system leverages the existing business relationships that already exists, takes advantage of that pre-existing privity of contract, and provides for the audit trail necessary to minimize error and fraud. A variation on the LEC-administered system was endorsed by APCC in its original comments in

⁶If the “caller-pays” is adopted, the existing local coin rate might be acceptable for where the caller pays if that parity is required for technical simplicity -- even though the coin rate clearly exceeds the marginal costs given that the established coin rate must pay for local message charges which the pay telephone operator does not incur with dial-around and 0+/0- calls. With caller-pays, given that a caller has the choice of whether to make the call using the payphone or not, and also has visibility as to the costs of that decision, the Commission can be more flexible in the ceiling on such charges. However, if the carrier pays, then the threshold marginal costs standard is the only standard that should apply because the “market forces” of caller-choice are eliminated due to a lack of caller visibility to the charges.

CC Docket No. 91-35. Comments of APCC, CC Docket No. 91-35, April 5, 1991 at 23-28. In contrast to APCC's original proposal (which had compensation taken out of access charges), in the system proposed here the LEC would assess pay phone compensation charges on each carriers' access bill based upon the actual number of completed payphone calls made over that carrier.

In contrast, the carrier pays system, as proposed in the NPRM, is unnecessarily complex, vague, ambiguous in its implementation, and costly to administer. As will be shown, the NPRM's carrier pay administration system will result in the need to create millions of redundant and unnecessary complex transaction-based business relationships, even where a de minimis amount of money is required to change hands.

Under the Commission's NPRM proposal, each of the more than 514 IXC's



who purchase access and the 1000+ LECs who provide services originating from payphones would be required to track each of the 1000-2000

payphone provider's 1.85 million payphones. along with each and every call that such carrier carries that originates on each of those payphones. In total and even considering the limited geographic scope of some of these carriers, far in excess of a billion cross-referencing call tracking transactions would be required to be done each day simply to determine whether compensation might be owed. However, the burden of massive and often redundant calculations will not stop there. Each carrier will be required to determine whether it is uniquely responsible for paying the compensation on each of those calls. This is a non-trivial task because (as described in more detail below), a "carrier compensation" liability rule, a proposed by the NPRM, is not specific enough to uniquely identify which "carrier" is responsible for payment. This follows from the fact that there is often more than one carrier or "IXC" involved in the completion of a call -- particularly toll-free calls.

This burdensome, ambiguous, and costly system (as proposed in the NPRM) is completely unnecessary given that a LEC-administered system that employs existing transaction based business relationships can be easily employed in order to eliminate all of these complexity, cost and ambiguity concerns. Moreover, the burdens of a LEC administered system are orders of magnitude less than the ambiguous and onerous NPRM's version of "carrier-pays." The more efficient LEC administered system employs only a small subset of the transaction-based business relationships that would occur under the Commission's NPRM system that obliges all carriers to track compensation calls. Thus, rather than each of the more than

1500 carriers tracking calls originating from 1.85 million payphones, only each LEC will required to track the calls that originate from payphone directly connected to its local network. This is just a small subset of the tracking transactions that would have been required under the Commission's NPRM approach.

Moreover because every local exchange carrier has a transaction-based business relationship with each and every pay telephone owner connected to its local network, no new transaction based business relationships would be required that do not already exist today. Today, every local exchange carrier renders a bill to every payphone provider that connects to its network for local monthly charges, local usage charges, and any other services provided. Each of these LEC billing systems is capable, and does from time to time, generate payments to these pay telephone providers (e.g., when an overpayment is received and must be paid back, or a deposit must be returned).

Similarly, every local exchange carrier has a transaction-based business relationship with the carrier that connect to its network (whether it be itself or another) over whose network a call from the payphone is initially carried. A further simplification is that a LEC-administered system need only be done on a "net-net" basis. That is, the LEC may track the payphone compensation paid separate and apart from the LEC collection system because the access billing system can cue off of the information digits indicating a payphone call, yet not be concerned with which particular payphone actually originated the call.

Using this net-net compensation/collection system, payphone compensation can be easily, and cost effectively collected and paid out through these existing transaction based business relationships, using existing LEC systems. As noted above, under any carrier pays systems, each LEC will be required to cut compensation checks to each PSP each month (or quarter) for its own toll-free and dial-around services. Thus, there would be no incremental effort required for a LEC to pay compensation for all PSPs connected to their respective networks and, in turn, collect compensation from carriers connected to their networks through a separate compensation rate element, along with the collection of access rate elements.

A comparison of the relative simplicity of the LEC payphone compensation administration is illustrated in the following chart:

	Alternative LEC Administration of Payphone Compensation (Ameritech/SBC Model)	FCC-Proposed "IXC" To FCC Proposed "IXC" Payphone Provider Model
Number of New Transaction Based Business Relationships That Must Be Established	None (LECs already bill/issue payments to payphone owners who are connected to their networks, and bill/issue payments to all carriers connected to their networks. Piggy-backs on LEC compensation payment obligation to PSP that exist in any case)	>1 Million (1000-2000 private and public payphone providers x 514 "IXC" carriers; also 1000 other carriers, such as LECs)
Number of New Business Transactions Per Year (i.e. # of times money must change hands between parties who had no previously established business relationship)	None	>4 Million (based on 4 settlement payments per year)

It would be arbitrary and capricious for the Commission to ignore these staggering numbers. The NPRM's proposal appears particularly irrational and burdensome when one considers that each LEC is going to be paying compensation to each PSP connected to its network under any carrier pays system. Thus, each LEC is already going to be tracking calls originating from payphones on their network and reimbursing each PSP for compensation. It only makes sense that the LEC directly pay the PSP for all calls originated by the payphone, and, in turn, the LEC receive reimbursement from carriers to whom it otherwise would be billing access charges. This LEC administration system has already been proposed and implemented by Ameritech and Southwestern Bell.

V. Every LEC Has the Primary Financial Interest In Calls Which Originate From Payphones Connected to their Networks

Each and every LEC has a significant financial stake in every call that originates from a payphone that is connected to its network. Thus, the LECs have a significant stake in properly administering the payment of payphone compensation to payphones that are directly connected to their networks.

For every payphone originating calls over a LEC's network, that payphone generates for the LEC access charge revenue which, on average, constitutes 40-50% of the total revenue that the ultimate revenue ultimately collected for that call. In a competitive LEC world, where CLECs compete with incumbent LECs for access revenue, the LEC maximizes access revenue by attracting payphone entities to

connect to their networks (as opposed to connecting to the networks of their competitors). Where a PSP (i.e. payphone provider) payphone connects to a LEC's network, the LEC receives through that payphone substantial access revenues from other carriers, substantial local and short-haul toll revenues, monthly connection charges, and vertical feature charges for usage. Thus, a LEC is a substantial beneficiary of a PSP payphone connecting to its network. In fact, most of the revenue received by a LEC due to connection of a PSP's payphone to its network is in the form of usage revenue (which are collected in access charges on both toll and toll-free calls), not the monthly charges.

Clearly it is in the LEC's financial interest that it provide this administrative service of collecting and disbursing compensation on a "net-net" basis. This truism is in direct contradiction to the presumption in footnote 82, the NPRM, which claims that the "LEC...that carries a payphone's local coin traffic neither benefits from toll-

free calls, nor has

revenues diverted because of them."

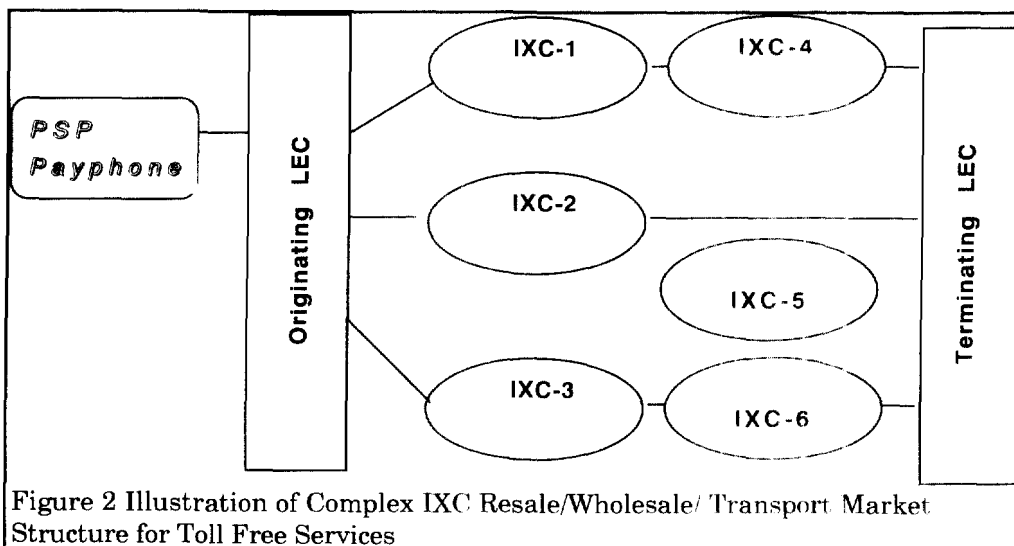
NPRM at footnote

82. Thus, the

Commission must

find that the

LECs should not



only be required to track calls, they should be the collector and disburser of compensation payments for payphones connected to their networks on a net-net basis.

As mentioned earlier, LEC administered system also avoids the unnecessary ambiguity that exists with an "IXC-pays" system. In many cases, the initial "IXC" that connects to the LEC's access network is not the end user's IXC. This is illustrated in Figure 2 by the privity of contract and network connections that exists today. In this figure, the many wholesale/retail IXC relationships that can exist with toll-free and toll services is shown. [Either of the IXC's in any horizontal line can be the retail IXC, while the other might be wholesale IXC.] Thus, a system (such as that proposed in the NPRM) which assigns payment responsibility to the "IXC" is vague and ambiguous because there is often more than one IXC on many calls, particularly toll free calls. The NPRM's IXC-pays system incorrectly presumes that there is a one-to-one relationship between a toll-free call and an IXC.

The nationwide 800 database system makes the possible configurations even more complex because it is the 800 customer who may patch together many "IXCs" to carry a call -- with none of these IXC's having any business relationship to the other. With 800 database, at the customer's direction, different IXCs can be involved in varying capacities in a toll-free call (e.g., one IXC can originate in a particular LATA (or at a certain time of day), another can terminate in a particular LATA (or at another time of day), or another can play the limited roll of reselling the service to an end user, while another can be the end user's RespOrg). The IXC that

is connected to the originating LEC's network is not necessarily the IXC that bills the end user for the toll-free. So, which IXC does the Commission expect to pay the payphone operator? How will that IXC know that it is not duplicating the payment by another IXC for the same call? This ambiguity is eliminated in the LEC-administered system because only the LEC must pay all compensation to the payphone operator that is connected to its network, and the LEC then uniquely receives reimbursement for those calls that it forwards to other carrier networks.

In sum, in addition to being more efficient, a LEC administered pay/collect system eliminates the ambiguity problem created in the NPRM 's proposal.

VI. Through Oversight, The NPRM Fails to Explicitly Recognize The Compensation Obligations of the LECs (Particularly the BOCs) For Toll-Free and Toll Services

The Commission's NPRM appears to overlook the compensation obligations of the BOCs for their intraLATA toll-free traffic that originates from pay telephones. The NPRM only refers to prescribing compensation for calls made over "IXCs," even though the TRA'96 Section 276 requires compensation on every completed call. By improperly applying the term "IXC" to prospective payers, the NPRM appears to fail to recognize that the LEC (more particularly the BOC) is often the end-to-end intraLATA local and toll carrier for 800 calls (in addition to being the interLATA carrier for some 800 calls, such as in the New York/NJ corridor). Thus, the NPRM appears to ignore any obligation on the LEC's part (particularly BOCs) to pay compensation by virtue of the NPRM's use of the term "IXCs" to describe compensa-

tion payers. A failure to recognize the payment obligations of the LECs for all their calls (including intraLATA and local 800 calls) would violate Section 276's requirements that all completed calls be compensated.

Thus, in any drafted rules, the Commission must not use the term "IXC" to refer to compensation payers. Instead, it should refer to the LEC paying the PSP for every call carried over or through the LEC's network that originates over the payphone operator's payphones and, in turn, the LEC being reimbursed by any carrier (not necessarily the IXC) to whom such call is handed off. As noted above, this is the system of collection and payment that Ameritech and Southwestern Bell have proposed (and implemented) in their waiver requests. See, NPRM at note 35.

VII. Any Payphone Compensation System Must Prohibit Double Compensation

The NPRM's "carrier pays" proposal will result in a windfall for many payphone operators because it fails to take into account the double compensation that will occur where the caller currently pays or will pay originating charges directly to the PSP. Unless the Commission's rules require otherwise, this currently collected caller-paid amount will be in addition to the "carrier pays" compensation the NPRM proposed. Thus, the payphone operator will be double dipping. For example, in Texas, a "pay telephone service" is allowed to impose a "set use fee" not exceeding 25 cents on the originating caller, on both interstate and intrastate calls. See Texas Substantive Rule 23.54(h). That is, coin-deposits are already being

collected by PSPs on toll free calls.⁷

**VIII. Fraud Opportunities Must Be Mitigated; Payphones Must Be Defined;
Compensated Pay Telephones Must Generate the Proper Info Digits**

In any compensation scheme such as here, there is an opportunity for an individual or firm to misrepresent itself as providing pay telephones . This is particularly true given the non-common carrier status of pay telephone operators (resulting in no auditable verification with a state or other agency that pay telephones are actually being provided) and a lack of any definition in the Commission's rules as to what a pay telephone is (leaving any telephone to be designated a pay telephone at will by a firm wishing to collect compensation).⁸ Even under the current scheme, APCC had erroneously collected thousands of dollars on behalf of at least one firm -- based simply on a claim by the operator (including a power of attorney) that its telephones were pay telephones (which they were not).⁹ It was not until after APCC billed all IXC's for these 22,000 lines, to collect compensation

⁷Section 226 of the Communications Act allows a pay telephone to assess charges to the originating caller even when the non-presubscribed carrier is accessed. 47 U.S.C. §226(c)(1)(C).

⁸For example, must a pay telephone have a coin-slot? May a pay telephone be a plain telephone on a coffee table in a Doctor's waiting room?

⁹This incident is documented in the Commission's 91-35 ex parte filings, dated September 21, 1993 from Al Kramer, Keck Mahin and Cate (Council for APCC) to William Caton, describing a September 15, 1994 ex parte to Michael Carowitz, FCC from Lance Norris, APCC.